

Moore & Van Allen, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Attn: Evan M. Bass

[illegible]

THIS ONE BUILDING AGREEMENT (this "Agreement") is made effective the __ day of _____, 2013, by and between DATA RESIDENTIAL, LLC, a North Carolina limited liability company ("**DATA**"), and the CITY OF DURHAM, a North Carolina municipal corporation (the "**City**").

WHEREAS, DATA is the owner of that certain tract or parcel of land located in the State of North Carolina, County of Durham, and City of Durham and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**DATA Property**”); and

WHEREAS, the City is the owner of that certain tract or parcel of land located in the State of North Carolina, County of Durham, and City of Durham and more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the “**City Property**”), upon which the Durham Performing Arts Center facility (the “**DPAC Building**”) is located; and

WHEREAS, DATA intends to construct on the DATA Property a mixed-use building (the “**DATA Building**”) and an elevated walkway with infrastructure and related building systems (the “**Walkway**”) to connect the DATA Building to the DPAC Building, as shown on Exhibit C attached hereto and incorporated herein by this reference; and

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WHEREAS, DATA and the City have agreed that as part of the DATA Building, DATA will construct certain walls that will be located in close proximity to the DPAC Building (the “**Boundary Walls**”), which Boundary Walls are shown on Exhibit C attached hereto; and

WHEREAS, DATA and the City desire to set forth their mutual understanding with respect to construction of the Walkway and Boundary Walls, maintenance and repair of the Walkway and Boundary Walls, and access to and use of the Walkway.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree, for and on behalf of themselves, their successors and assigns, as follows:

1. Incorporation of Recitals. The foregoing recitals shall constitute an integral part of this Agreement, and this Agreement shall be construed in light thereof.
2. Location of Walkway and Boundary Walls. The Walkway and Boundary Walls will be located at or near the common boundary of the DATA Property and the City Property, as shown on Exhibit C attached hereto.
3. Access, Construction and Attachment Rights. The City hereby authorizes DATA to enter upon the City Property and the DPAC Building to construct, at DATA’s sole cost and expense, the Walkway and Boundary Walls as shown on Exhibit C; provided, however, DATA shall cooperate with the City during the period of construction so as not to unreasonably interfere with the operation of the DPAC Building. If any portion of the Walkway or Boundary Walls encroaches upon the City Property, or if any portion of the DATA Building encroaches upon the City Property, whether as a result of shifting or settling or minor variances from the plans and specifications, an easement shall exist for such encroachment, and for the maintenance of the same, so long as the encroachment does not materially and adversely affect the DPAC Building or any other improvements on the City Property or the use and enjoyment of the area upon which the encroachment exists. DATA shall be responsible for repairing any damage to the DPAC Building, any other improvements on the City Property, or any landscaping on the City Property resulting from construction of the Walkway and Boundary Walls. In the event that either the then-current owner of the City Property or the then-current owner of the DATA Property shall desire to tear down or alter the current improvements located on its property, then such party shall leave necessary support, infrastructure, and related building systems for the Walkway to be compliant with the City of Durham Code and the North Carolina State Building Code (the “**NCSBC**”), or in the alternative, shall construct other improvements to provide the support, infrastructure, and related building systems necessary (if any) for the Walkway to be compliant with the City of Durham Code and the NCSBC.
4. Repair Responsibilities. Upon completion of construction, DATA shall be responsible for maintaining, at its sole cost and expense, the Walkway and Boundary Walls; provided, however, the City and DATA shall each be responsible for any damage to the Boundary Walls or Walkway caused by the act or omission of such party, its employees, contractors or agents, and each party shall promptly repair, at its sole cost and expense, any damage for which it is responsible. If either party shall neglect or refuse to make repairs for which it is responsible hereunder, and such neglect or refusal shall continue for thirty (30) days after receipt of notice from the other party that such repairs are required, the other party may have the Boundary Walls or Walkway (as applicable) repaired and shall be entitled to prompt reimbursement of the costs therefor from the party neglecting or refusing to make the repairs, together with interest thereon at the lower of 10%

per annum or the maximum rate permitted by law, from the date of expenditure until reimbursed. If the Boundary Walls, or any portion thereof, is accidentally destroyed in any manner or to any extent, DATA shall have the right (but not the obligation) to rebuild the Boundary Walls. If the Walkway, or any portion thereof, is accidentally destroyed in any manner or to any extent, DATA shall have the obligation (unless otherwise agreed with the then-current owner of the City Property) to rebuild the Walkway.

5. Performing Construction and Repairs. All construction and repairs provided for herein shall be conducted during reasonable business hours and upon reasonable advance notice to the other party, except in the event of an emergency. Such notice shall include the proposed nature, extent, and location of such work and the anticipated commencement and completion dates. DATA and the City shall cause their agents, employees, and contractors to use reasonable precaution to avoid damage to the other party's property. All construction and repairs shall be performed expeditiously in accordance with all applicable building codes and governmental regulations. All such work shall be performed in such a manner as not to cause any unreasonable interruption of or undue interference with the business conducted on the property. All such work shall be performed in a first-class, lien-free manner. Upon completion of all construction and repairs, the party performing the work shall restore the property of the other party to substantially the same condition which prevailed on or before the commencement of such construction and repairs.
6. North Carolina Building Code. DATA and the City acknowledge that the design of the DATA Building contemplates the construction of walls and facility structures to be in close proximity to or directly connected to the DPAC_Building. DATA and the City further acknowledge that the close proximity and shared connections of the DATA Building and the DPAC Building will require joint evaluation for purposes of complying with the NCSBC applicable at the time of construction of the DATA Building. Accordingly, DATA and the City agree to allow the Walkway, the Boundary Walls, and all portions of the DATA Building and DPAC_Building that are in close proximity or are connected to one another to be evaluated jointly, as necessary, for purposes of complying with the NCSBC. DATA and the City each agree to comply with all requirements of the NCSBC, including without limitation:
 - A. The DATA Building and DPAC_Building shall comply with the NCSBC requirements related to fire and smoke protection features, including any requirements related to integrated life safety systems.
 - B. In the event that either the then-current owner of the City Property or the then-current owner of the DATA Property shall desire to tear down and rebuild or to alter the current improvements located on its property, then such party shall construct such improvements in accordance with the NCSBC and, to the extent necessary or desirable, given the close proximity and/or connection of the improvements, to allow such improvements on the City Property and DATA Property to constitute one building.
7. Covenants Running With the Land. This Agreement shall create mutual easements and covenants that run with the City Property and DATA Property, burdening and benefiting the owners of the City Property and DATA Property, and their respective tenants, successors and assigns. Upon any transfer of a fee simple interest in the City Property or the DATA Property, the party transferring such interest (the "**Transferor**") and the party receiving such interest (the "**Transferee**") shall be jointly and severally liable for all maintenance, repair, replacement and payment obligations of Transferor pertaining to the Boundary Walls and Walkway accrued up to the date of transfer, without prejudice to the rights of the Transferee, but the Transferee shall be

exclusively liable for all such maintenance, repair, replacement and payment obligations accruing after the transfer.

8. Miscellaneous.

A. Failure of either party to comply with any or all of the terms and conditions of this Agreement shall not, under any circumstances, entitle the other party to terminate this Agreement or any easements or other rights contained herein, but shall give rise only to such other remedies as may be provided in this Agreement or by law or equity. Except as expressly provided in this Agreement, all rights, powers and privileges conferred hereunder shall be cumulative and in addition to and not to the exclusion of those provided by law or equity. Any modification to this Agreement must be in written form, executed by all parties hereto, and duly acknowledged in a manner suitable for and effective upon recording in the Office of the Register of Deeds of Durham County, North Carolina. If this Agreement is terminated, the parties shall be responsible, on an equitable basis, for completing all renovations and new construction necessary to bring the affected buildings into compliance with the City of Durham Code and NCSBC.

B. Each party to this Agreement covenants that, upon written request from the other party, from time to time, and within a reasonable time after request (not to exceed 30 days after receipt of such request in writing) it will issue to such party one or more estoppel certificates stating: (a) whether or not said party knows of any default under this Agreement, and if any defaults are known, specifying the nature thereof; (b) whether to its knowledge this Agreement has been assigned, modified or amended in any way and, if it has, stating the nature thereof; (c) whether or not to the best knowledge of said party as of the date of said certificate this Agreement is in full force and effect and such other affirmations or information as might be reasonably requested. Each such certificate shall be in recordable form and may be relied upon by the other party, its lenders, tenants, successors and assigns.

C. No waiver of any provision of this Agreement shall be deemed to imply or constitute a further waiver of that provision or any other provision. Should any provision be declared invalid by a legal authority of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect.

D. This Agreement shall be construed in accordance with laws of the State of North Carolina.

E. If any action, suit, arbitration or other proceeding is instituted to remedy, prevent or obtain relief from a default in the performance by any party to this Agreement of its obligations hereunder, the prevailing party shall be reimbursed by the other party hereto for all of such party's attorneys' fees incurred in each and every such action, suit, arbitration or other proceeding, including any and all appeals or petitions therefrom. As used in this Paragraph, attorneys' fees shall be deemed to mean the full and actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual and customary hourly fee charged by the attorney performing such service.

F. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be considered as one and the same instrument.

G. DATA and the City shall not do or permit any act which would adversely affect the structural integrity of the improvements constructed upon the property of the other party.

H. Each Party to this Agreement shall defend, indemnify and hold harmless each other party and its employers, contractors and agents from and against any and all claims, actions, losses, costs, expenses and liabilities (including reasonable attorneys' fees actually incurred at customary hourly rates) whatsoever in connection with bodily or personal injury or death and property damage as occurs in the process of any construction or repairs. Each Party to this Agreement shall maintain adequate insurance coverage over the real property and improvements owned respectively by each Party and subject to this Agreement.

I. DATA represents and covenants that DATA and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this agreement. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

TO HAVE AN TO HOLD the aforesaid easements and covenants and all privileges and appurtenances thereunto belonging to such parties.

And DATA and the City covenant one with the other that they have done nothing to impair such title as they received, and that they will warrant and defend the title against the lawful claims of all persons claiming by, under, or through them.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this instrument under seal as of the day and year first above written.

DATA:

DATA RESIDENTIAL, LLC,
a North Carolina limited liability company

By: Capitol Broadcasting Company, Incorporated, a
North Carolina corporation, its Manager

By: _____(SEAL)
Michael J. Goodmon, Sr., Vice President

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Michael J. Goodmon, Sr., Vice President of Capitol Broadcasting Company, Incorporated, Manager of
DATA RESIDENTIAL, LLC

Date: _____

Notary Public

Print Name: _____

[Official Seal]

My commission expires: _____

IN WITNESS WHEREOF, the undersigned have executed this instrument under seal as of the day and year first above written.

Attest:

CITY:

CITY OF DURHAM,
a North Carolina municipal corporation

Name: _____
Title: City Clerk

By: _____ (SEAL)
Thomas J. Bonfield, City Manager

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public of _____ County, North Carolina, certify that _____ (the "Signatory") personally came before me this day and acknowledged that (s)he is the City Clerk of the City of Durham, North Carolina and that by authority duly given and as the act of said City, the foregoing instrument was signed in its name by the City Manager of the City of Durham, North Carolina and attested by (him/her) as City Clerk to the City of Durham, North Carolina.

The Signatory acknowledged to me that (s)he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the ____ day of _____, 2013.

Notary Public

Print: Name: _____
[Note: Notary public must sign exactly as on notary seal]

My Commission Expires: _____
(MUST BE FULLY LEGIBLE)

(Notarial Stamp/Seal)

Exhibit A

Legal Description of DATA Property

[Note: make sure air rights parcel is included in this legal description]

Exhibit B

Legal Description of City Property

[Note: make sure to exclude various air rights parcels in this legal description.]

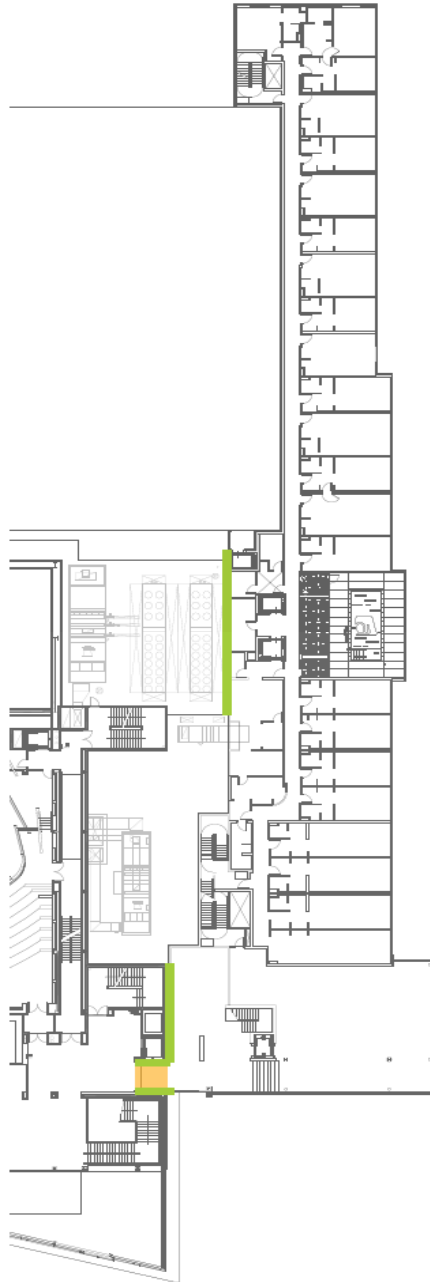
Exhibit C

Plans depicting the Boundary Walls and Walkway

Exhibit C - continued

Plans depicting the Boundary Walls and Walkway

EXHIBIT C



ATC HOTEL: PAGE 2 OF 3
SECOND FLOOR AND PRESIDENT'S CLUB

KEY:

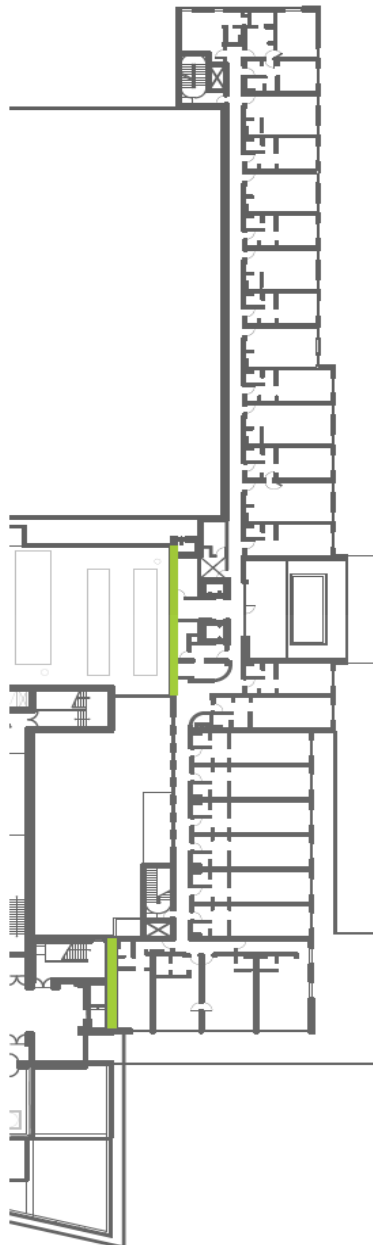
BOUNDARY WALLS
WALKWAY



Exhibit C - continued

Plans depicting the Boundary Walls and Walkway

EXHIBIT C



ATC HOTEL: PAGE 3 OF 3
THIRD FLOOR (AND ABOVE)

KEY:

BOUNDARY WALLS